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OF ORIGINAL FILED
Los Angeles Superior Court

AUG 19 2014

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JO ANN NICKERSON,

Plaintiff,

vs.

BLUSH SALON & SPA LLC, dba BLUSH
SALON; and DOES 1-20, inclusive,

Defendants.

Case No.: **BC 5 5 5 2 2 9**

COMPLAINT FOR DAMAGES

- 1) **NEGLIGENCE;**
- 2) **STRICT PRODUCT LIABILITY; and**
- 3) **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

COMES NOW the Plaintiff, Jo Ann Nickerson, by and through her attorneys of record, Barry P. Goldberg, A Professional Law Corporation, and alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. At all times herein mentioned, Plaintiff JO ANN NICKERSON (hereinafter "Plaintiff") is and was a resident of the City and County of Los Angeles, State of California. At the time of the events alleged herein, Plaintiff was seventy-two (72) years old.

2. At all times herein mentioned, Defendant BLUSH SALON & SPA LLC, dba BLUSH SALON (hereinafter "Defendant" or "Blush Salon") is a limited liability company organized and existing under the laws of the State of California, owning and operating the salon located at 22539 Ventura Blvd., Woodland Hills, California 91364. At all times relevant to the

1 allegations contained in this complaint, Blush Salon was registered to do business, and did
2 conduct business, in the County of Los Angeles and State of California.

3 3. The true names and capacities, whether individual, corporate, associate or
4 otherwise, of Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff, who
5 therefore sues said Defendants by such fictitious names. Plaintiff will amend this complaint to
6 show their true names and capacities when the same have been ascertained. Plaintiff are
7 informed and believe and thereon allege that each of the fictitiously named Defendants is
8 responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages were
9 proximately caused by those Defendants. Each reference in this complaint to "Defendant,"
10 "Defendants," or a specifically named Defendant refers also to all Defendants similarly sued
11 under fictitious DOE names.

12 4. Plaintiff is informed and believes, and thereon allege, that at all times material
13 hereto and mentioned herein, each Defendant sued herein (both named and DOE Defendants)
14 was the agent, servant, employer, joint venturer, contractor, contractee, partner, division owner,
15 subsidiary, division, alias, and/or alter ego of each of the remaining Defendants and was, at all
16 times, acting within the purpose and scope of such agency, servitude, employment, contract,
17 ownership, subsidiary, alias and/or alter ego and with the authority, consent, approval, control,
18 influence and ratification of each remaining Defendant sued herein.

19 5. This Court is vested with jurisdiction over the Defendants, because the
20 Defendants resides or purports to have its principal places of business located within the State of
21 California, and the events alleged herein occurred in the State of California.

22 6. The venue of this action is proper in the County of Los Angeles because the
23 personal injury damages sustained by Plaintiff as alleged herein occurred in the County of Los
24 Angeles.

25 7. Plaintiff was a business invitee of Blush Salon on or about October 4, 2013.
26 Plaintiff was a long time regular customer of Blush Salon, coming to the salon for various beauty
27 services.

1 8. Plaintiff alleges that Blush Salon regularly provided home baked goods for its
2 patrons as part of its service, hospitality and ambiance. Often those baked goods were home-
3 baked and brought to the salon by its owners and employees. Plaintiff is informed and believes
4 and thereon alleges that Defendants derived an economic benefit by providing baked goods to its
5 invited guests and patrons by furthering its image as a warm and friendly place to obtain beauty
6 services, making it more likely that guests and patrons would feel welcome and more likely to
7 return for beauty services in the future.

8 9. On October 4, 2013, in the morning hours, Plaintiff visited Blush Salon for beauty
9 services and had not eaten anything that day. She concluded her visit at the salon without any
10 incident or impairment. On her way out of the salon, after have receiving her beauty services,
11 Plaintiff availed herself of a home-baked cookie from the top of a hospitality cookie tray set out
12 for guests and patrons, like her. She ate the entire cookie as she was leaving the salon and did
13 not consume any other food or drink that day. Plaintiff did not voluntary take any substance or
14 drug that could have possibly have contained THC, which is the substance commonly found in
15 marijuana and related products.

16 10. Within approximately one hour of eating the cookie, Plaintiff developed a severe
17 reaction, including hallucinations, rapid heartbeat, confusion, disorientation, light headedness,
18 dizziness, blurred vision, tingling, headache, and nausea. She found herself unable to speak or
19 had delayed speech and was completely incapacitated.

20 11. Believing she might be having a stroke or heart attack, Plaintiff sought assistance
21 and emergency medical treatment at West Hills Hospital. Upon admission and examination, the
22 physicians noted Plaintiff's symptoms and were at a loss for her extreme incapacitation.
23 Eventually, the results from Plaintiff's blood test were received and indicated positive for the
24 drug THC, the drug by product from marijuana. Given that plaintiff was 72 years old and denied
25 ever using marijuana for any purpose at any time, Plaintiff was admitted to the hospital and kept
26 overnight for observation and additional testing. Because of the unusual presentation, Plaintiff's
27 blood was tested and re-tested and sent to different laboratories. Each time, the test results
28 indicated dangerously high levels of THC.

1 THC, particularly individuals that are unaccustomed to the effects of the drug, such as Plaintiff
2 herein. As such, the food product was not fit for human consumption and should not have been
3 made available for invited guests and patrons of the salon under any circumstances.

4 17. Defendants owed a reasonable duty of care to its invited guests and patrons, such as
5 the Plaintiff, to ensure that baked goods and treats provided to such guests and patrons were
6 wholesome, healthy, fit for human consumption and not made with illicit drugs or were
7 otherwise adulterated.

8 18. Plaintiff alleges that the Defendants and each of them knew that adulterated cookies
9 were brought into Blush Salon on that date by one of the owners or employees and that
10 defendants were negligent in allowing such an adulterated food product to be placed on a
11 hospitality tray where invited guests and patrons, such as the Plaintiff, would have access to the
12 adulterated food product. Further, Plaintiff alleges that it was reasonably foreseeable that an
13 invited guest or patron, such as Plaintiff would unknowingly ingest the adulterated food product
14 and would suffer the effects of the illicit substance.

15 19. Defendants were not only negligent in the baking, manufacturing and distributing a
16 food product which was not reasonably safe, but were negligent by failing to provide statutorily
17 required adequate warnings or instructions including, but not limited to, a warning that the food
18 product contained the marijuana and its by product THC. Further, such warnings would have
19 necessarily had to include a statement that marijuana and its by products, such as THC, is an
20 illicit substance that has no known proper dosage and that the amount of THC in the particular
21 baked product was unknown, untested and unverified.

22 20. Plaintiff alleges that by bringing in home baked goods to the salon as part of a for
23 profit enterprise, Defendants had a duty to comply with all statutory and regulatory provisions
24 that pertained or applied to the manufacture, distribution, storage, labeling, and sale of food
25 products, including, but not limited to, the Federal Food, Drug, and Cosmetics Act, which bans
26 the manufacture, sale and distribution of any "adulterated" food. Defendants failed to do so.
27 Plaintiff is among the class of persons designed to be protected by the statutory and regulatory
28 provisions pertaining to the Defendants' manufacture, distribution, storage, sale, and labeling of

1 its food.

2 21. Defendants had a duty to use supplies and raw materials in producing the food
3 product which were in compliance with applicable federal, state and local laws, ordinances and
4 regulations, which were from safe and reliable sources, which were clean, wholesome and free
5 from adulteration, and which were safe for human consumption, but failed to do so.

6 22. Defendants were negligent in their manufacturing and distribution of the product at
7 their place of business, and failed to adequately supervise any supplier of the product, employee
8 or other subcontractor and as a result, and served cookies adulterated with the marijuana by
9 product THC.

10 23. As a direct and proximate result of the Defendants' negligence, Plaintiff sustained
11 injury and damages as described herein.

12
13 **SECOND CAUSE OF ACTION**

14 **Strict Product Liability**

15 ***(Against All Defendants)***

16 24. Plaintiff refers to, repeats and realleges each of the allegations in Paragraphs 1
17 through 23 of this Complaint and incorporate said allegations into this cause of action as though
18 fully set forth herein.

19 25. Plaintiff alleges that putting the adulterated food product on an accessible
20 hospitality tray for invited guests and patrons as part of the salon's business practices, constituted
21 placing the adulterated food product into the stream of commerce regardless who manufactured
22 it or where it came from.

23 26. The adulterated food product that Defendants either baked, manufactured, or
24 distributed, then placed into the stream of commerce was, at the time it left Defendants' control,
25 defective and unreasonably dangerous for its ordinary and expected use because it contained an
26 illicit narcotic substance of marijuana and its by product THC, and was not fit for human
27 consumption. Marijuana and THC are not natural substances reasonably found in consumable
28 baked goods.

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36. As a direct and proximate result of defendants' negligence, Plaintiff ingested the adulterated food product and, in addition to her other physical injuries, suffered and continues to suffer severe emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For general damages in an amount according to proof at trial and beyond the jurisdictional minimum of this Court;
2. For medical and related expenses according to proof at trial;
3. For economic losses in an amount according to proof at trial;
4. For costs of suit herein;
5. For applicable statutory interest as provided by law;
6. For such other and further relief as the Court deems necessary and proper in the circumstances.

DATED: August 16, 2014

BARRY P. GOLDBERG,
A Professional Law Corporation

BY: 

BARRY P. GOLDBERG,
Attorneys for Plaintiff JO ANN
NICKERSON